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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 \* \* \*

9 UNITED STATES OF AMERICA,

Case No. 3:18-cr-00019-LRH-CLB

10 Plaintiff,

ORDER [FILED UNDER SEAL]

11 v.

12 STONEY PRIOR,

13 Defendant.

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16 On September 3, 2020, the Government filed a motion to preclude Defendant from cross-  
17 examining deposition witness D.A. on her criminal history. ECF No. 104. Defendant's response  
18 was due on September 17, but to date nothing has been filed. Defendant did file his Exhibit List  
19 on September 11, which listed D.A.'s criminal history as Exhibit 501, and would indicate to the  
20 Court that it is his intention to cross examine D.A. on this information at the deposition. *See* ECF  
21 No. 116.

22 Specifically, the Government seeks to preclude Defendant from impeaching D.A.'s  
23 character for truthfulness using her two misdemeanor convictions under Federal Rule of Evidence  
24 609. The Government provides that both convictions are over 10 years old, and that Defendant has  
25 not provided the Government with a notice of its intent to cross exam on these issues.

26 Federal Rule of Evidence 609 is clear. "[I]f more than 10 years have passed since the  
27 witness's conviction or release from confinement for it, whichever is later, . . . [e]vidence of the  
28 conviction is admissible only if: (1) its probative value, supported by specific facts and

1 circumstances, substantially outweighs its prejudicial effect; and (2) the proponent gives an  
2 adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity  
3 to contest its use.

4 The two misdemeanor convictions the Government seeks to preclude are for (1) disturbing  
5 the peace, for which she was sentenced to a fine of \$347 on June 28, 2006; and (2) Driving under  
6 the Influence of Alcohol, for which she was sentenced to 10 days jail and \$500 fine on August 11,  
7 1997. Defendant's Deposition Exhibit 501. Both convictions are well outside the 10-year period.  
8 The District of Nevada has previously held that a conviction for driving under the influence is not  
9 a crime involving dishonesty or false statement and therefore, is not admissible. *See US v. Thurber*,  
10 Case No. 3:05-CR-00080-BES-RAM, 2007 U.S. Dist. LEXIS 111626, at \*5-6 (April 26, 2007).  
11 The Court agrees and will accordingly preclude Defendant from cross-examining D.A. on this  
12 conviction. The Court further finds that D.A.'s conviction for disturbing the peace also does not  
13 involve any element of dishonesty or false statements, and likewise precludes Defendant from  
14 cross examining D.A. on this conviction. *See U.S. v. Foster*, 227 F.3d 1096, 1100 (quoting *U.S. v.*  
15 *Ortega*, 561 F.2d 803, 806 (9th Cir. 1977)) (reasoning that it is the "intent of the draftsmen of Rule  
16 609 [to limit] the 'dishonesty and false statement' language to those crimes that involve some  
17 element of misrepresentation or other indicium of a propensity to lie and [to exclude] those crimes  
18 which, bad though they are, do not carry with them a tinge of falsification[.]").

19 IT IS THEREFORE ORDERED that the Government's motion in limine (ECF No. 104)  
20 is **GRANTED**.

21 IT IS FURTHER ORDERED that the Clerk of Court is to **SEAL** this Order.

22 IT IS SO ORDERED.

23 DATED this 21 day of September, 2020.

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25 LARRY R. HICKS  
26 UNITED STATES DISTRICT JUDGE  
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